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Washington Appeals Court Continues Ban on The Post's Series on Vietnam

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WASHINGTON, June 22 — Nine Federal Appeals judges continued tonight a ban against publication by the Washington Post of articles based on secret Pentagon documents. They said that the ban would remain in effect until they ruled on the propriety of the Government's attempt to stop the articles.

After a three-hour hearing, the Court of Appeals for the District of Columbia gave no indication how quickly it would decide.

Shortly before the judges went into a 30-minute "in camera" session to hear the Government's argument that continued publication of the Pentagon documents would jeopardize the national security, The Post's lawyers rejected a Government offer to review the study of Vietnam war involvement with an eye toward possible declassification of some portions.

Solicitor General Erwin N. Griswold, who argued the Government's case, said he had been authorized by the Secretaries of State and Defense and the military chiefs of staff to offer a "joint task force" to examine the document. He said it was impossible that within 45 days any document that did not remain secret would be made public.

'Government Handout'

But The Post's chief attorney, William R. Glendon, described the offer as one of "Government by handout" and said it would merely permit the executive branch to continue efforts to determine what the press should publish.

"It is time that the presses were allowed to roll in this matter," Mr. Glendon told the Court.

The Government has offered no evidence, Mr. Glendon argued, that continuation of the articles would imperil the nation's security—the charge that has formed the basis of the Government's complaint.

Mr. Griswold, making his first courtroom appearance in the Government's spreading efforts to halt disclosures by The New York Times, The Post and now The Boston Globe, characterized the articles as threats to the President's powers and to the nation's diplomatic negotiations.

Referring to negotiations between the United States and the Soviet Union on limiting strategic arms, Mr. Griswold asked:

"What chance is there going to be to carry on the SALT talks if the people on the other side think anything they might say, particularly if they put it in writing, would show up in the American press?"

Sees Peril on Mideast

Then, in the same vein, he spoke of tense relations in the Middle East and asked "what prospect do you think there is for our playing the role we think we ought to play" in seeking peace there if the First Amendment were to permit publication of anything the press obtained from Government sources.

Mr. Griswold, using strong legal language, said that a President must be able to discuss issues frankly with subordinates and to receive from them recommendations "without the chilling effect—and I use that work with real feeling in this case" of disclosure in the press.

Early in his presentation, the Solicitor General said that the Pentagon study case involved "the integrity of the institution of the Presidency" itself.

That argument was not advanced by the Government when it sought and failed to get yesterday a temporary injunction against The Post from District Court Judge Gerhard A. Gesell, whose ruling that The Post may continue the series is what is now under appeal.

Mr. Glendon told the court that it was evident from affidavits filed by Post executives and reporters that classified information is frequently given to journalists by officials.

Judges Often Interrupt

Members of the court, including Chief Judge David L. Bazelon, frequently interrupted to question both sides sharply.

The court permitted Representative Bob Eckhardt, Democrat of Texas, to argue on behalf of himself and 26 other members of Congress that the Pentagon study should be made public. He said that it was "extremely pertinent" to current debate on Vietnam.

At one point, Judge Roger Robb—who joined with Judge

Spottswood W. Robinson 3d to halt The Post's series after the second article Saturday, so that the merits of the issue could be argued — asked the Solicitor General if the court was being urged to issue a "futile" injunction.

What if the following day The Los Angeles Times begins publishing the articles, he asked. "Would you be asking us to ride herd on a swarm of bees?"

Mr. Griswold replied that The Boston Globe had been drawn into the controversy, putting the Government in three Federal court jurisdictions at once. So far the Justice Department is capable of prosecuting all three cases, he said, but if they become more extensive and the Government is "overwhelmed," it would have to reassess the situation.

'This Is a Great Case'

At the opening of his argument, Mr. Griswold said that he wanted to put the issue in perspective. "This is a great case, I suppose, and great cases sometimes make bad law," he said.

He contended that the existence of copyright laws proved that the First Amendment was not absolute. "I note that The Washington Post is copyrighting" its Pentagon series, he said.

Similarly, Mr. Griswold argued that if "some enterprising paper" obtained a copy of an unpublished manuscript by Ernest Hemingway—"perhaps stolen, bought from his secretary or found on the sidewalk"—and planned to publish it, Mrs. Hemingway could enjoin the press under rule of literary property.

After several such analogies, Mr. Griswold was interrupted by Judge J. Skelly Wright and encouraged to relate his argument to the First Amendment.

Judge Bazelon joined in, asking Mr. Griswold, "Does your case depend on these documents being the property of the United States and thus copyrighted?"

The Solicitor General replied that it did not, but that he regarded the discussion as relevant.

Before the court went into closed session, Mr. Griswold asked that the court permit the Government time to appeal "in another place"—to the Supreme Court—if the appeals judges ruled against the Justice Department.